FILE COPY

FILED
MAR 25 1947
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 1155

BANKERS FARM MORTGAGE COMPANY,
Petitioner,

vs.

THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS AND BRIEF IN SUPPORT OF PETITION.

A. D. SUTHERLAND,
LAWRENCE J. BERNARD,
Counsel for Petitioner.

INDEX

Subject Index

	Page
Petition for writ of certiorari	1
Opinion below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	2
Reasons for granting the writ	4
Conclusion	6
Appendix "A"	7
Brief in support of petition	13

Table of Cases Cited

Addison v. *Holly Hill Fruit Products*, 322 U. S. 607	5, 15
Alabama v. *King*, 314 U. S. 1	6
Baltimore Shipbuilding Co. v. *Baltimore*, 195 U. S. 375	6
Calderon v. *Atlas*, 170 U. S. 272	5, 14
Duplex Printing Press Co. v. *Deering*, 254 U. S. 443	5, 16
Educational Films Corp. of America v. *Ward*, 282 U. S. 379	4
Federal Trade Commission v. *Raladam*, 283 U. S. 643	5
Florida Ry. Co. v. *Schulte*, 103 U. S. 118	14
Garrison v. *U. S.*, 7 Wall. 686	5, 14
Hale v. *Iowa State Board of Assessment and Review*, 302 U. S. 95	4
Helvering v. *Gerhardt*, 304 U. S. 402	6
Helvering v. *Mountain Products Co.*, 303 U. S. 376	6
Imperial Fire Ins. Co. v. *Coos Co.*, 151 U. S. 452	14
Lynch v. *U. S.*, 292 U. S. 571	5
Macallen Co. v. *Massachusetts*, 279 U. S. 620	4, 5
Maillard v. *Lawrence*, 16 How. 251	5, 14
McCaughn v. *Hershey Chocolate Co.*, 283 U. S. 488	5, 16
McCulloch v. *Maryland*, 4 Wheat. 316	6

Page

Moulor v. *American Life Ins. Co.*, 111 U. S. 335 ..... 5, 14
Osborn v. *Bank of the U. S.*, 9 Wheat. 738 6
Plummer v. *Coler*, 178 U. S. 115 5
Smith v. *Davis*, 323 U. S. 111 4
Union Pacific v. *Penniston*, 18 Wall. 5 6
United States v. *County of Allegheny*, 322 U. S. 174 .. 17
United States v. *Stewart*, 311 U. S. 60 16
United States v. *Trans Missouri Freight Association*, 166 U. S. 290 16

STATUTES CITED

Act of March 4, 1923, C. 252, Title I, Par. 2, 42 Stat. 1456, Title 12, Sec. 1043 15
Act of February 13, 1925, as amended, Sec. 3b (43 Stat. L. 939) 2
Congressional Record, Volume 53, pp. 6795, 6849, 6851, 7128, 7875, 7972, 7999 and 8002 16
Corpus Juris Secundum, Vol. 17, par. 324, p. 761 14
Emergency Farm Mortgage Act of May 12, 1933 (48 Stat. 46, 47) 4
Federal Farm Loan Act of July 17, 1916, Sections 17, 18, 20, 26 and 29 2
H. R. 4465, 79th Congress 15
Restatement of the Law of Contracts, Vol. 1, paragraph 236 ..... 5, 14
Wiliston on Contracts, Vol. 2, paragraph 621 ..... 5, 14
Words and Phrases, Bouviers Dictionary of Law 13

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 1155

BANKERS FARM MORTGAGE COMPANY,
Petitioner,

vs.

THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

The Petitioner Bankers Farm Mortgage Company, a corporation organized and existing under the laws of the State of Wisconsin, prays that a Writ of certiorari issue to review the judgment of the Court of Claims of the United States entered in the above entitled case on January 6, 1947.

Opinion Below

The opinion in the Court of Claims (R. 11) has not yet been officially reported.

Jurisdiction

The judgment of the Court of Claims was entered on January 6, 1947 (R. 25). The jurisdiction of this Court is

invoked under Section (3)(b) of the Act of February 13, 1925 amended (43 S. L. 939).

Question Presented

Whether the Joint Stock Land Bank bonds in question are obligations of the United States by reason of the provisions of the Federal Farm Loan Act of July 17, 1916 (39 Stat. 360) and the facts and circumstances under which they were issued and sold to the public.

Statutes Involved

The pertinent provisions of the statute involved, the Federal Farm Loan Act of July 17, 1916, are set forth in Appendix A, *infra*, pp. 7-11.

Statement

This case was tried below on the defendant's demurrer to Petitioner's amended petition.

Petitioner is the owner and holder for value of $15,771,600 par value of bonds issued by the Bankers Joint Stock Land Bank of Milwaukee, a corporation which was organized and existed under and pursuant to the Federal Farm Loan Act of July 17, 1916.

Under the provisions of the Federal Farm Loan Act of July 17, 1916, all of the bonds were designed by the Secretary of the Treasury (Section 20, Appendix A, *infra*, p. 9), and the Federal Farm Loan Board (later the Farm Credit Administration) was given wide powers of control over joint stock land banks and the bonds issued by them including control over their organization, issuance of their stock and bonds, interest charges on loans (Sections 17 and 18, Appendix A, *infra*, pp. 7-9) and complete control over their liquidation (Section 29, Appendix A, *infra*, p. 10). Under the last mentioned section the Bank issuing the bonds

in question was liquidated with each bondholder receiving 55.27 per centum of the par value of his bonds.

This suit is for $7,886,047.04 which is the balance due.

This petitioner acquired the bonds by a plan approved by the Farm Loan Board which Board required this petitioner to acquire 95% of the bonds outstanding. This petitioner was required to give a contract to each bondholder providing for the payment of moneys received from the United States because of legislative relief and forty dollars per hundred or stock in this corporation equal to the balance due.

Printed on each bond by the Treasury was the following

> This bond is issued under authority of the Act of Congress approved July 17, 1916, which provides that "Farm Loan bonds issued under the provisions of this Act shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, Municipal and local taxation." (R. page 3.)

With respect to the representations made at the time of the issuance and sale of the bonds in question in its amended petition (R. 9-10) the Petitioner alleged and the defendant by demurrer admitted:

> "24. These bonds were issued and sold to the public by private underwriters. Printed circulars issued by many of these private underwriters stated:
>
> "(1) 'By Act of Congress, these bonds are declared to be instrumentalities of the United States Government';
>
> "(2) 'The bonds are engraved and printed in the United States Bureau of Engraving and Printing, under the authority of the United States Treasury; they are declared by the Farm Loan Act and are held by

the United States Supreme Court to be "instrumentalities of the Government."'

"(4) 'Its bonds and the mortgages pledged as security have been approved by the Federal (Farm Loan Board, a Bureau of the Treasury Department of the United States Government.';

"(5) 'These bonds are legal investment for trust funds in Wisconsin, and are also a legal investment for trust funds under the jurisdiction of the Federal Government, and acceptable as security for Postal Savings and other deposits of Government funds.'"

"(6) 'This bank operates under Federal Charter and Government supervision.'"

Reasons for Granting the Writ

1. The case is of substantial public importance because it involves the rights of all persons holding joint stock land bank bonds. Not only will thousands of former bondholders of this Joint Stock Land Bank be affected, but also the decision of this Court rendered herein will affect the great number of persons holding bonds in other Joint Stock Land Banks which like the bank in question were forced into receivership and liquidation by the Federal Farm Loan Board before the enactment of the Emergency Farm Mortgage Act of May 12, 1933 (48 Stat. 46, 47), which Act provided funds to bring about the orderly liquidation (without a resulting loss to the bondholders) of the Joint Stock Land Banks remaining in operation.

2. The decision of the Court below is in conflict with the decisions of this Court in *Macallen Co.* v. *Massachusetts*, 279 U. S. 620; *Educational Films Corporation of America* v. *Ward*, 282 U. S. 379; *Hale* v. *Iowa State Board of Assessment and Review*, 302 U. S. 95; and *Smith* v. *Davis*, 323 U. S. 111.

3. The use by the Court below of statements made in Congressional debates (R. 19) in construing the ambiguous language of section 26 of the Federal Farm Loan Act of July 17, 1916 (Appendix A, *infra*, p. 10) is in conflict with numerous decisions of this court, including *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443; *McCaughn* v. *Hershey Chocolate Co.*, 283 U. S. 488; and *Federal Trade Commission* v. *Raladam*, 283 U. S. 643.

4. The decision of the Court below failed to apply proper rules of construction to ambiguous language. *Garrisson* v. *United States*, 7 Wall. 686; *Calderon* v. *Atlas*, 170 U. S. 272; *Moulor* v. *American Life Insurance Company*, 111 U. S. 335, *Restatement of the Law of Contracts*, Vol. 1, paragraph 236; *Williston on Contracts*, Vol. 2, paragraph 621, (1920).

5. The decision of the Court below construed the words used by Congress and the acts done by the Government in issuing the bonds in such a manner as to result in the public being deceived, contrary to *Maillard* v. *Lawrence*, 16 How. 251; *Lynch* v. *United States*, 292 U. S. 571; *Restatement of the law on Contracts*, Vol. 1, paragraph 236 (f); *Addison* v. *Holly Hill Fruit Products* (1944), 322 U. S. 607.

6. The Court below erred in concluding an intent to deny liability because Congress rejected certain proposed amendments. These contained objectionable features and were voted down for reasons other than the liability feature.

7. The decision of the Court below holding the tax exemption arose because Congress said so is contrary to *Macallen Co.* v. *Massachusetts* (1929), 279 U. S. 620, which held that the tax exemption arose because Congress made the bonds instrumentalities of the Government, and that the declaration by Congress as to exemption is "superfluous." *Plummer* v. *Coler*, 178 U. S. 115. This section making the bonds

in question tax exempt instrumentalities of the Government of the United States to be operative at all must be construed to create the governmental obligation contended by the petitioner.

8. The decision of the Court below in holding that bonds of a private corporation, as such, can be made tax exempt by Congressional declaration is contrary to this Court's interpretation of the constitution, to wit: that tax immunity may be afforded only to direct activities of the Government.

McCulloch v. *Maryland*, 4 Wheat. 316, (last paragraph);
Osborn v. *Bank of the U. S.*, 9 Wheat. 738;
Union Pacific v. *Penniston*, 18 Wall. 5;
Helvering v. *Gerhardt*, 304 U. S. 402;
Helvering v. *Mountain Products Co.*, 303 U. S. 376;
Alabama v. *King*, 314 U. S. 1;
Baltimore Shipbuilding Co. v. *Baltimore*, 195 U. S. 375.

Conclusion

WHEREFORE, it is respectfully submitted that this petition for a writ of certiorari should be granted.

March 25th, 1947.

A. D. SUTHERLAND,
LAWRENCE J. BERNARD,
Counsel for Petitioner.

APPENDIX A

Pertinent provisions of Federal Farm Loan Act of July 17, 1916 (39 Stat. 360), as amended, showing substitution of "Farm Credit Administration" for "Federal Farm Loan Board."

§ 16. Bonds; form and contents

Each joint-stock land bank organized under this chapter shall have authority to issue bonds based upon mortgages taken by it in accordance with the terms of this chapter. Such bonds shall be in form prescribed by the Farm Credit Administration and it shall be stated in such bonds that such bank is organized under sections 811-823 of this title, is under Federal supervision, and operates under the provisions of this chapter. July 17, 1916, c. 245, § 16, 39 Stat. 374; Ex. Ord. No. 6084, Mar. 27, 1933.

§ 17. The Farm Credit Administration shall have power—

Organizing and Chartering Banks and Loan Associations; Authorizing Increase of Stock

(a) To organize and charter Federal land banks, and to charter national farm loan associations and joint-stock land banks subject to the provisions of this subchapter, and in its discretion to authorize them to increase their capital stock.

Reviewing and Altering Interest Rates

(b) To review and alter at its discretion the rate of interest to be charged by Federal land banks for loans made by them under the provisions of this subchapter, said rates to be uniform so far as practicable.

Granting or Refusing Authority to Issue Bonds

(c) To grant or refuse to Federal land banks, or joint-stock land banks, authority to make any specific issue of farm-loan bonds.

Making Rules and Regulations as to Charges on Loans

(d) To make rules and regulations respecting the charges made to borrowers on loans under this subchapter for expenses in appraisal, determination of title, and recording.

Recording Reports, etc.; Examining Banks and Associations

(e) To require reports and statements of condition and to make examinations of all banks or associations doing business under the provisions of this subchapter.

Prescribing Form and Terms of Bonds and Surety Bonds

(f) To prescribe the form and terms of farm-loan bonds, and the form, terms, and penal sums of all surety bonds required under this subchapter and of such other surety bonds as they shall deem necessary, such surety bonds to cover financial loss as well as faithful performance of duty.

Regulating Payments Between Banks

(g) To require Federal land banks to pay forthwith to any Federal land bank their equitable proportion of any sums advanced by said land bank to pay the coupons of any other land bank, basing said required payments on the amount of farm-loan bonds issued by each land bank and actually outstanding at the time of such requirement.

Suspending or Removal of Directors, Registrars, Appraisers, and Examiners

(h) To suspend or to remove for cause any district director or director at large, or any registrar, appraiser, examiner, or other official appointed by the Farm Credit Admistration under authority of sections 651–664 of this tile, as amended, the cause of such suspension or removal to be communicated forthwith in writing by said Administration to the person suspended or removed, and in case of a district director or director at large to the proper Federal land bank, Federal intermediate credit bank, production credit corporation and regional bank for cooperatives.

Exercising Supervisory Authority Over Banks

(i) To exercise general supervisory authority over the Federal land banks, the national farm-loan associations, and the joint stock land banks herein provided for.

Incidental Powers

(j) To exercise such incidental powers as shall be necessary or requisite to fulfill its duties and carry out the purposes of this subchapter. July 17, 1916, c. 245, § 17, 39 Stat. 375; Ex. Ord. No. 6084, Mar. 27, 1933; Aug. 19, 1937, c. 704, § 9, 50 Stat. 707.

§ 18. Written approval of issue requisite

No issue of farm-loan bonds shall be authorized unless the Farm Credit Administration shall approve such issue in writing. July 17, 1916, c. 245, § 18, 39 Stat. 375; Ex. Ord. No. 6084, Mar. 27, 1933.

§ 20. Preparation; custody of plates and dies; exchange for registered bonds; reexchange for coupons.

In order to furnish farm loan bonds for delivery at the Federal land banks and joint-stock land banks, the Secretary of the Treasury is hereby authorized to prepare suitable bonds in such form, subject to the provisions of this chapter, as the Farm Credit Administration may approve, such bonds when prepared to be held in the Treasury subject to delivery upon order of the Farm Credit Administration. The engraved plates, dies, bed-pieces, and so forth, executed in connection therewith shall remain in the custody of the Secretary of the Treasury. Any expenses incurred in the preparation, custody, and delivery of such farm loan bonds shall be paid by the Secretary of the Treasury from any funds in the Treasury not otherwise appropriated: *Provided, however,* That the Secretary shall be reimbursed for such expenditures by the Farm Credit Administration through assessment upon the farm land banks in proportion to the work executed. They may be exchanged into registered bonds of any amount, and reexchanged into coupon bonds, at the option of the holder, under rules and regu-

lations to be prescribed by the Farm Credit Administration. July 17, 1916, c. 245, § 20, 39 Stat. 377; Ex. Ord. No. 6084, Mar. 27, 1933.

§ 26. Exemption from taxation; exceptions first mortgages and bonds as instrumentalities of Government.

Every Federal land bank and every national farm loan association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes upon real estate held, purchased, or taken by said bank or association under the provisions of sections 761 and 781 of this title. First mortgages executed to Federal land banks, or to joint stock land banks, and farm loan bonds issued under the provisions of this chapter, shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation. July 17, 1916, c. 245, § 26, 39 Stat. 380.

§ 27. Fiduciary and trust funds; security for public deposits.

Farm-loan bonds issued under the provisions of this chapter by Federal land banks or joint-stock land banks shall be a lawful investment for all fiduciary and trust funds, and may be accepted as security for all public deposits. July 17, 1916, c. 245, § 27, 39 Stat. 380.

§ 29. Dissolution and appointment of receivers.

Upon default of any obligation, Federal Land Banks and joint stock land banks may be declared insolvent and placed in the hands of a receiver by the Federal Farm Loan Board and proceedings shall thereupon be had in accordance with the provisions of this section regarding national farm loan associations.

§ 203(c). Assumption of liability by Government prohibited; recital necessary to be included.

The United States Government shall assume no liability, direct or indirect, for any debentures or other obligations

issued under section 1041 of this title, and all such debentures and other obligations shall contain conspicuous and appropriate language, to be prescribed in form and substance by the Farm Credit Administration and approved by the Secretary of the Treasury, clearly indicating that no such liability is assumed. July 17, 1916, c. 245, § 203(c), as added Mar. 4, 1923, c. 252, § 2, 42 Stat. 1456, and amended Ex. Ord. No. 6084, Mar. 27, 1933.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 1155

BANKERS FARM MORTGAGE COMPANY,
Petitioner,

vs.

THE UNITED STATES

BRIEF IN SUPPORT OF PETITION

Pursuant to the Farm Loan Act, the Farm Loan Board was an agent of the Government and was directed to provide the Treasury with the words printed on each farm loan bond. The Treasury then printed the bonds.

On each bond was printed the fact that farm loan bonds shall be deemed and held to be instrumentalities of our government.

"Instrumentality" is defined by dictionaries as "condition of being instrumental". "Instrumental" is defined as the condition of being an instrument. "Instrument" at law is defined as a writing expressing a contract or a means. When bonds are referred to as instruments they are defined as credit instruments (Words and Phrases—Bouviers Dictionary of Law).

The Government claims that farm loan bonds shall be construed as being a "means". This petitioner contends that they shall be construed as being credit instruments. That the words used by our Government are ambiguous must be conceded.

One issue concerns the proper rule of construction. The government and the lower court construed according to an intent of Congress divined from Congressional debates and the rejection of certain proposed amendments. This petitioner contends that this ambiguity should be construed as prospective purchasers would consider them.

Garrison v. *United States,* 7 Wall. 686;
Caledron v. *Atlas Steamship Co.,* 170 U. S. 272;
Moulor v. *American Life Ins. Co.,* 111 U. S. 335;
Imperial Fire Ins. Co. v. *Coos Co.,* 151 U. S. 452;
Florida Ry. Co. v. *Schutte,* 103 U. S. 118;
Restatement of Contracts, Vol. 1, Par. 236;
Williston on Contracts, Vol. 2, Par. 621 (1920);
C. J. Secundum, Vol. 17, Par. 324, page 761.

This court has emphasized the fact that a construction should not be taken that will mislead the American people.

> "It would seem to be a most extravagant supposition which would hold that in the enactment of a law affecting the interests of the Nation at Large the Legislature should select for that purpose language by which the Nation or the mass of people must necessarily be misled." *Maillard* v. *Lawrence,* 16 Howard 251.

A construction should be taken as the public would naturally interpret the words used.

> "After all, Legislation, when not expressed in technical terms is addressed to the common run of men, and

> is therefore to be understood according to the sense of the thing, as the ordinary words addressed to him."
> *Addison* v. *Holly Hill Fruit Products* (1944), 322 U. S. 607.

When the words used are considered with the governmental control of the bonds as to wording, printing, amount, interest rate, collateral and liquidation, the public had every right to consider farm loan bonds as government obligations.

That the public did so is self evident. In the 1920 period when these bonds were sold mortgage bonds sold to yield six percent, to seven percent; mortgages at seven percent to fifteen percent and Liberty Bonds dropped in value as low as $81 per $100 to yield better than four and one-half percent.

Ample evidence of the fact that purchasers believed farm loan bonds to be government obligations was submitted at the time when H. R. 4465 79th Congress was considered by the claims committee and counsel for the government was present. This bill was for the purpose of securing payment of those bonds as petitioner agreed to do. (The committee did not act on the bill preferring to wait until the Court had determined the issue of legal liability.)

In the words of Senator Williams given in the Senate (February 16, 1923, Cong. Rec. Vol. 64, Page 1931):

> "There is not a man in America who bought those bonds who did not believe and were not justified in believing that the Federal Government was behind them."

Congress never did deny liability. It did, however, amend the Farm Loan Act to deny liability for obligations of the Federal Intermediate Credit Banks. March 4, 1923-C. 252, Title I, Par. 2, 42 Stat. 1456 Title 12 Sec. 1043.)

None of the foregoing was referred to by the Court of Claims. Instead it chose to interpret what was said and done by debates in Congress. None of these debates referred to what Congress meant when it used the word "instrumentality." The only reference to this word that we are able to find is when Senators Harding and Lodge sharply called the attention of Congress to the fact that when it declared these bonds to be instrumentalities of our government it thereby pledged the faith and credit of our government for their payment without limit. (Cong. Rec. Vol. 53, P. 6795 and P. 6849-51.)

The use of debates as to opinions that do not refer to the words to be construed is not a proper guide and expresses the opinion of only a few members of Congress.

Duplex Printing Company v. *Deering*, 245 U. S. 443;
U. S. v. *Trans Missouri Freight Association*, 166 U. S. 290;
McCaugh v. *Hershey Chocolate Co.*, 283 U. S. 488;
U. S. v. *Stewart*, 311 U. S. 60.

Certain proposed amendments were relied on to prove an intent not to create a liability.[1] This petitioner insists that this was error. The amendments were debated on points other than the liability feature. To say for instance that a proposed amendment that provided for the investing of savings deposits in long term bonds and also created a liability was voted down because of the liability feature only is hardly proper. A reading of debates on each proposed amendment discloses that the objectional features were the methods proposed rather than the liability feature with one exception.[2] This was presented, and voted on during the

[1] Cong. Rec. Vol. 53, P. 7128-7875-7972.
[2] Cong. Rec. Vol. 53, P. 7999-8002.

last day of the debate and the discussion thereon did not relate to liability.

Mortgages were by the same section declared to be instrumentalities of our Government. This Court apparently construed this to mean that the mortgages thereby became Government property for in *U. S.* v. *County of Allegheny* (1944) 322 U. S. 174 this Court said "the recording may not be the occasion for taxing Government's property. Federal Land Bank *vs.* Crossland, 261 U. S. 374."

To say that these bonds shall be construed as being a means of obtaining money would give no effect to the declaration. Without section 26 they were made the method of financing agriculture—Why should the words "and as such" be added if Congress did not intend that they be more than a means—The very heading of the section (Title 12, Sec. 931) shows that tax exemption was intended to follow as a result of the declaration for it says Exemption from taxation; *exceptions* first mortgages and bonds as instrumentalities of Government."

We submit that if a broker sold bonds as instrumentalities of the United States Steel Corporation and they were not obligations of that corporation, the Department of Justice would promptly prosecute for fraud. The reason is that by all standards the public would have every right to consider such bonds as credit instruments of the United States Steel Co. Nor would this department avoid punishment because of a defense that the bonds were a *means* only by which that corporation raised money.

It thus appears that intent derived from debates and the rejection of amendments conflicts with what Congress said and our Government did when construed according to the settled law.

Since Congress could easily have denied its most apparent liability and in fact did so as to other obligations (Title XII, Par. 1043) the result of the lower Courts method of disproving liability we believe was error.

Respectfully submitted,

A. D. SUTHERLAND,
LAWRENCE J. BERNARD,
Counsel for Petitioner.

March 25th, 1947.

(9852)

FILE COPY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 1155

BANKERS FARM MORTGAGE CO.,
Petitioner,

vs.

THE UNITED STATES OF AMERICA

PETITIONER'S REPLY BRIEF

A. D. SUTHERLAND,
Attorney for Petitioner;
L. J. HERNARD,
Of Counsel.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 1155

BANKERS FARM MORTGAGE CO.,
Petitioner,

vs.

THE UNITED STATES OF AMERICA

PETITIONER'S REPLY BRIEF

---

1. The Government denies liability on account of Farm Loan bonds because Congress did not use the words 'Guaranty', 'promise,' 'make' or surety.' Prior to 1916 Congress did not use any of these words when it created a liability as near as we are able to ascertain. Before 1916 Congress had never attempted to assume a liability of corporations which it authorized. To say a liability can be created by using only certain words would defeat the rule that a liability may be created by implication as well as by expressed promises.

2. The statement that the United States is liable for these bonds was printed on each bond and was in the Act as follows: "Farm Loan bonds shall be deemed and held to be instrumentalities of the Government of the United States."

The Government does not deny that the word 'instrumentality' when referring to a bond is commonly interpreted to be credit instrument. These bonds were certainly made something of the Government. They could not be property of the Government. They must be credit instruments or obligations of the Government. This is not denied.

3. The remarks of Senator Hollis and Representative Moss do not refer to the word 'instrumentality.' These Congressmen do not explain why the word was used or the effect of that word. Their statement is merely of opinion. From the record we do not know whether Representative Moss or Senator Hollis was aware of the fact that these bonds were instrumentalities of the Government. Senator Carter Glass in 1923 also said that the United States was not liable on these bonds but he added the bonds were not instrumentalities of the Government. He there disclosed that the basis of his opinion was upon an erroneous statement of fact (Congressional Record Vol. 64, page 1931). This illustrates the rule that this Court pronounced in numerous decisions prior to 1916 and summarized in the case of *Duplex Printing Press Company* v. *Deering,* 254 U. S. 443, to wit: that debates are not a safe guide and should not be used unless they expressly refer to the word to be construed. Certainly the Public and attorneys had every reason to rely upon the rule set forth in the *Duplex Printing* case in the 1920 period when these bonds were sold.

Legislative history indicates that Congress recognized the liability of the United States for by Sections 30 and 32 (H. R. 3835-73rd Cong. U. S. C. Title 12, Sec. 991—1933) three hundred million dollars was directed by Congress to be used as financial aid to Joint Stock Land Banks so that all of their obligations would be paid. The Joint Stock Land Bank of Milwaukee was under a Government receiver-

ship at that time and could not partake in the financial relief afforded. The other legislation referred to by Counsel clearly indicate that Congress sought to remove all doubt as to liability rather than that Congress denied liability. Since Congressmen from 1923 (64 Congressional Record page 1931) were well informed by Senators Williams, McFadden and McLean that the Public considered Farm Loan bonds to be Government obligations and Congress did nothing to deny this interpretation although Congress did expressly deny liability of obligations of the Federal Intermediate Credit Banks is an acquiescence in the construction taken by purchasers of Farm Loan bonds.

The Legislatures of New Jersey and New York expressly provided that Municipalities were not liable for obligations of the authorized corporation 'Port Authority'. Judge Hand writing for the majority said that the Port Authority was owned and controlled by the Municipalities therefore in fact its obligations were Municipal obligations. Judge Frank dissented saying that the Legislature expressly said that the obligations of Port Authority should not be Municipal obligations therefore they could not be Municipal bonds. This Court affirmed the majority rule without opinion. *Commissioner* v. *Estate of White,* 144 F. (2d) 1019, 323 U. S. 792 (1945).

4. We find nothing in *Emery Fleet Corporations* v. *Western Union,* 275 U. S. 415 to support counsel's claim that Congress can exempt securities of such banks from taxation even though the principal business of such banks is private banking.

McCulloch v. *Maryland* held that because of this Court's construction of the Constitution states were without power to tax a direct activity of the Government and by construction states could tax private activity of the banks chartered by Congress as shares of stock and ownership of

property (see last paragraph). That case clearly held that states are deprived of the right to tax solely from the interpretation of the Constitution. Counsel for the Government claims that Congress has the right to deprive states of the right to tax and interpret the Constitution. To say that the *McCulloch* case is authority for such a claim ignores the principles of our check and balance system of Government as first established by Chief Justice John Marshall in the *Marberry* v. *Madison* case (1 Cranch 137) which pronounced the theory of Alexander Hamilton (Federalist 77) that it was the exclusive power and duty of the Court to construe the Constitution. We do not believe that any of the cases cited by Counsel (page 14) hold that Congress can deprive states of the right to tax a subject matter which this Court has decreed might be taxed by its construction of the Constitution. This Court said obligations of National Banks might be taxed by states. *Clement National Bank* v. *Vermont* (1913), 231 U. S. 120. To say that Congress can deprive states of the right to tax bonds of a Joint Stock Bank is to say that Congress can override this Court's interpretation of the Constitution. Counsel for the Government is urging this Court to abolish our check and balance system of Government. This is a vital issue in this case.

Respectfully submitted,

A. D. SUTHERLAND,
Attorney for Petitioner;
L. J. BERNARD,
Of Counsel.

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	1
Statute involved	2
Statement	3
Argument	7
Conclusion	14

CITATIONS

Cases:	
Bankers Farm Mortgage Co. v. *United States*, 94 C. Cls. 44	7
Emergency Fleet Corp. v. *Western Union*, 275 U. S. 415	13
Farmers Bank v. *Minnesota*, 232 U. S. 516	14
Federal Land Bank v. *Bismarck Co.*, 314 U. S. 95	14
Federal Land Bank v. *Crosland*, 261 U. S. 374	14
Federal Land Bank v. *Gaines*, 290 U. S. 247	9
McCulloch v. *Maryland*, 4 Wheat. 316	14
Osborn v. *Bank of the United States*, 9 Wheat. 738	14
Owensboro National Bank v. *Owensboro*, 173 U. S. 664	14
Smith v. *Kansas City Title Co.*, 255 U. S. 180	14
Statutes:	
Emergency Farm Mortgage Act of May 12, 1933, c. 25, 48 Stat. 41, 12 U. S. C. 992 (Title II of the Agricultural Adjustment Act of May 12, 1933, c. 25, 48 Stat. 31):	
Sec. 21	12
Federal Farm Loan Act of July 17, 1916, c. 245, 39 Stat. 360, 12 U. S. C. 641 *et seq:*	
Sec. 16	9, 10
Sec. 18	10
Sec. 19	10
Sec. 20	10
Sec. 26	2, 13
Sec. 27	10
Federal Farm Mortgage Corporation Act, approved January 31, 1934, c. 7, 48 Stat. 344, 12 U. S. C. 1020 *et seq*	10
Sec. 4 (a)	10
Home Owners' Loan Act of 1933, c. 64, 48 Stat. 128, as amended, c. 168, 48 Stat. 643, 12 U. S. C. 1461 *et seq*	10
Sec. 4 (c)	10
Miscellaneous:	
53 Cong. Rec. 6856, 7536, 7724, 7746–7747, 7870–7875, 7972, 7999–8002	11, 12
38 Op. Atty. Gen. 75	11

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 1155

BANKERS FARM MORTGAGE COMPANY, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (R. 11–25) is reported at 69 F. Supp. 197.

JURISDICTION

The judgment of the Court of Claims was entered on January 6, 1947 (R. 25). The petition for a writ of certiorari was filed on March 25, 1947. The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925, as amended.

QUESTION PRESENTED

Whether bonds issued by a joint stock land bank pursuant to the Federal Farm Loan Act

(Act of July 17, 1916, c. 245, 39 Stat. 360, 12 U. S. C. 641 *et seq.*) are obligations of the United States.

STATUTE INVOLVED

Section 26 of the Federal Farm Loan Act (Act of July 17, 1916, c. 245, 39 Stat. 360, 380, 12 U. S. C. 931) provides as follows:

> SEC. 26. That every Federal land bank and every national farm loan association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes upon real estate held, purchased, or taken by said bank or association under the provisions of section eleven and section thirteen of this Act. First mortgages executed to Federal land banks, or to joint stock land banks, and farm loan bonds issued under the provisions of this Act, shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation.
>
> Nothing herein shall prevent the shares in any joint stock land bank from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the bank is located; but such assessment and

taxation shall be in manner and subject to the conditions and limitations contained in section fifty-two hundred and nineteen of the Revised Statutes with reference to the shares of national banking associations.

Nothing herein shall be construed to exempt the real property of Federal and joint stock land banks and national farm loan associations from either State, county, or municipal taxes, to the same extent, according to its value, as other real property is taxed.

STATEMENT

The following facts were alleged by the petitioner in the court below (R. 1–10):

The Bankers Joint Stock Land Bank of Milwaukee was a joint stock land bank organized under the Federal Farm Loan Act (R. 1, 2).[1] In or about 1919 this bank issued bearer bonds maturing on various dates between 1938 and 1955 (R. 2–4, 9). These bonds bore interest at rates from 4½ percent to 5½ percent payable semi-annually and evidenced by coupons attached to the bonds (R. 9). They were sold to the public by private underwriters (R. 9).

[1] As the court below pointed out (R. 14), "The Joint Land Bank was organized by citizens of the United States for the purpose of private gain and all of the capital of this corporation was furnished by private investors and the corporation engaged in the loaning of money to farmers for a profit, subject only to the restrictions imposed by the Act of Congress referred to above [Federal Farm Loan Act]."

The face of a typical bond read (R. 3–4):

JOINT STOCK FARM LOAN BOND

Act of Congress, Approved July 17, 1916

M. 1480

THE BANKERS JOINT STOCK LAND BANK OF MILWAUKEE, WISCONSIN

Is indebted to the Bearer in the sum of

1000 one thousand dollars 1000

This bond is payable twenty years from date of issue with interest at the rate of 5 per centum per annum, payable semi-annually following date of issue. Both principal and interest are payable in gold or lawful money of the United States at the office of the issuing Joint Stock Land Bank, or at the office of such fiscal agent or agents as such Bank may hereafter designate. This bond is subject to redemption on any interest date after five years from the date hereof by the payment of the principal of the bond and the unpaid accrued interest.

This bond is issued under authority of the Act of Congress approved July 17, 1916, which provides that "farm loan bonds issued under the provisions of this Act, shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation."

This Bank is organized under Section sixteen of the Federal Farm Loan Act,

operates under the provisions thereof, and is under Federal supervision.

In Witness Whereof The Bankers Joint Stock Land Bank of Milwaukee has caused this obligation to be signed by its President and attested by its Secretary under its corporate seal, and two interest coupon sheets of twenty coupons each to be attached hereto.

Milwaukee, Wisconsin, May 1, 1919.

(ILLEGIBLE),
President.

Attest:
GEO. L. BARTLETT,
Secretary.

The back of each bond contained the following statement (R. 4–5):

This bond is issued under authorization from the Federal Farm Loan Board and is secured by United States Government bonds or approved first mortgages on farm lands at least equal to the amount of the bonds issued.

F. W. MCLEAN,
Registrar.
17th Federal Land Bank District.

A typical interest coupon attached to the bonds read (R. 5):

17 $25

THE BANKERS JOINT STOCK LAND BANK OF MILWAUKEE, WIS.

Will Pay to Bearer Twenty-Five Dollars For Six Months' Interest On The First

Day of Nov., 1927 On $1,000 Joint Stock Farm Loan Bond.
M. 1480 1924–39

In 1927 the bank defaulted in the payment of interest on its bonds and it was declared insolvent and placed in receivership by the Federal Farm Loan Board (R. 2). A Bondholders Protective Committee was organized with which were deposited receiver's certificates representing approximately 95 percent in value of the bonds (R. 7).

In 1931 petitioner, the Bankers Farm Mortgage Company, was organized as a Wisconsin corporation by a group of business men who held substantial amounts of the bonds of the bank (R. 7). Petitioner's sole business has been the acquisition of bonds of the bank and the acquisition and liquidation of its assets (R. 7). In 1931 petitioner circularized all known bondholders of the bank and offered to exchange one share of its own non-par common stock (declared value $40 per share) for each $100 par value of bonds of the bank or, in the alternative, to purchase such bonds for cash equal to 40 percent of their par value (R. 7–8). By this method petitioner acquired more than 95 percent in principal amount of the outstanding bonds of the bank (R. 8). It acquired bonds of the par value of $4,533,100 in exchange for 45,262 shares of its own stock and bonds of the par value of $11,021,000 for $4,323,-350.16 in cash, paid in installments (R. 8).

The receiver completed the liquidation by 1933 and bondholders received 55.27 percent of the par value of their bonds (R. 2).[2]

Petitioner brought suit in the Court of Claims and in its amended petition, filed July 17, 1946, alleged that the United States was indebted to it in respect of the unpaid balance of the Bankers Joint Stock Land Bank bonds "in the sum of $7,886,047.04, after allowing all just credits and offsets," and prayed for a judgment in that amount, with interest (R. 10). The court below sustained defendant's demurrer to the petition holding that "the language and history of the Farm Loan Act and the language and promises appearing on the bonds negative any implication of a promise to pay by the Government or the right of the purchasers and holders of the bonds to look to the United States as maker, surety or guarantor" (R. 18).

ARGUMENT

The only question presented by the petition is whether the bonds issued by the Bankers Joint Stock Land Bank are obligations of the United States. Neither the bonds themselves nor the Federal Farm Loan Act purport to make the bonds obligations of the United States. Peti-

[2] A more detailed statement of the facts as to all these transactions is contained in *Bankers Farm Mortgage Company* v. *United States*, 94 C. Cls. 44, which involved questions concerning the payment of certain expenses incident to the receivership of this same joint stock land bank.

tioner contends that the bonds became obligations of the United States because they were designated "instrumentalities" of the United States for tax exemption purposes, and because the Government's interest in the success of the Land Bank programs led the public to believe that it was guaranteeing the payment of the bonds. It is submitted that petitioner's contention that the United States is obligated to pay such bonds has only the merit of novelty.

1. It is clear that the language of the bonds does not contain any promise by the United States to pay them, either originally or upon default by the bank. The bonds recite that "The Bankers Joint Stock Land Bank of Milwaukee, Wisconsin, Is indebted to the bearer in the sum of One Thousand Dollars," and the bank is the only party which signed the bonds (R. 3–4). The interest coupons attached to the bonds recite that "The Bankers Joint Stock Land Bank of Milwaukee, Wis., Will Pay to Bearer * * *" (R. 5).

It is apparent from the face of the bonds, therefore, that the United States did not assume any obligation with respect to their payment, whether as maker, endorser, guarantor, or in any other capacity. Furthermore, the statement on the back of each bond that it "is secured by United States Government bonds or approved first mortgages on farm lands at least equal to the amount of the bonds issued" (R. 4–5)

plainly negatives any implication that holders of the bonds may look to the United States as security for their payment. It would seem obvious that, if those issuing the bonds had considered that the United States guaranteed their payment, a statement of such importance would have been stated in the bonds in the boldest type.

2. The Federal Farm Loan Act "was adopted in response to a national demand that the federal government should set up a rural credit system by which credit, not adequately provided by commercial banks, should be extended to those engaged in agriculture, upon the security of farm mortgages." *Federal Land Bank* v. *Gaines,* 290 U. S. 247, 250.

Nowhere in the Act is there any statement that the United States shall be liable for payment of bonds issued by joint stock land banks or that such bonds shall be obligations of the United States. It is inconceivable that Congress, although specifying in meticulous detail in the Act the conditions under which joint stock land banks could issue bonds, the nature of the required collateral security for them, and certain provisions to be contained in such bonds,[3] would have left solely to implication what would have

[3] Each joint stock land bank was authorized "to issue bonds based upon mortgages taken by it in accordance with the terms of this Act" (Act, § 16; 12 U. S. C. 821). A joint stock land bank desiring to issue bonds was required to make appli-

been their most important feature—a promise by the United States to pay them. If Congress had intended to make these bonds obligations of the United States, it would have said so in the Act.[4]

3. The legislative history of the Federal Farm Loan Act clearly shows that bonds issued by joint

---

cation to the Federal Farm Loan Board for approval of the issue and to tender to the local registrar of the Board first mortgages on farm lands or United States Government bonds equal in amount to the sum of the bonds proposed to be issued (Act, § 18; 12 U. S. C. 841). The Federal Farm Loan Board would then investigate and appraise the tendered securities, and no bonds could be issued without the Board's approval (Act, § 18; 12 U. S. C. 842–844). Upon approval of a bond issue, the registrar of the Federal Farm Loan Board retained in his possession the mortgages or Government bonds securing the bond issue (Act, § 19; 12 U. S. C. 853). Bonds issued by joint stock land banks were engraved and printed by the Treasury, which was to be reimbursed its expenses therefor through assessments made by the Federal Farm Loan Board against the banks (Act, § 20; 12 U. S. C. 864). Bonds were to be in the form prescribed by the Board and were to state that the bank was organized under the Federal Farm Loan Act and was "under Federal supervision" (Act, § 16; 12 U. S. C. 821). Bonds issued by joint stock land banks were made "a lawful investment for all fiduciary and trust funds" and might "be accepted as security for all public deposits" (Act, § 27; 12 U. S. C. 941).

[4] That Congress left no room for doubt when it intended that the United States should be obligated to pay as guarantor of bonds or in any other capacity is clearly shown by the Federal Farm Mortgage Corporation Act, approved January 31, 1934, c. 7, 48 Stat. 344, 12 U. S. C. 1020 *et seq.*, and the Home Owners' Loan Act of 1933, c. 64, 48 Stat. 128, as amended, c. 168, 48 Stat. 643, 12 U. S. C. 1461 *et seq.* Section 4 (a) (12 U. S. C. 1020c) of the former Act and Section 4 (c) (12 U. S. C. 1463) of the latter Act, as amended, each pro-

stock land banks are not and were not intended to be obligations of the United States. In the debates in the Senate, Senator Hollis, the member of the Committee on Banking and Currency who was in charge of the bill, expressly pointed out that land bank bonds would not be Government obligations.[5]

In the debates in the House, Representative Moss, a member of the Committee on Banking and Currency in charge of the bill in the House, brought out clearly that land bank bonds would not be obligations of the United States.[6]

Furthermore, as the court below pointed out (R. 19), certain proposed amendments under

---

vided with reference to the bonds issued by the corporations that "Such bonds shall be fully and unconditionally guaranteed both as to interest and principal by the United States, and such guarantee shall be expressed on the face thereof * * *." Cf. 38 Op. Atty. Gen. 75.

[5] He stated (53 Cong. Rec. 6856).

"Gov. Herrick says the Government guarantees these bonds. It does nothing of the kind. There is no Government guaranty anywhere in the bill, and that is one of the things farmers complain of. They say the Government should get behind this business and it ought to guarantee the bonds. If I had my way it would do it, because I believe personally that it is a proper Government function. I think the majority of the Members of this body are against that. Therefore, this is what is provided."

[6] He stated (53 Cong. Rec. 7536):

"It is possible under the terms of this bill that the United States Treasury may purchase $9,000,000 stock. This is the full amount of Government funds which may be invested in the system. No guaranty is given by the Government to any bonds issued by the bank."

which the Government would have guaranteed payment of the bonds and interest were rejected (53 Cong. Rec. 7746–7747, 7870–7875, 7972, 7999–8002, cf. 53 Cong. Rec. 7724).

Subsequent legislation enacted to meet the agricultural crisis in 1933 further demonstrates that petitioner's bonds issued under the Federal Farm Loan Act are not obligations of the United States by way of guarantee or otherwise. The Emergency Farm Mortgage Act of 1933 (Act of May 12, 1933, c. 25, 48 Stat. 41) was enacted as Title II of the Agricultural Adjustment Act (Act of May 12, 1933, c. 25, 48 Stat. 31). Section 21 of the Mortgage Act authorized federal land banks to issue, until May 12, 1935, or such earlier time as the Farm Loan Commissioner might determine that farm loan bonds were readily salable in the open market at a yield not in excess of 4 percent, bonds in an aggregate amount not to exceed $2,000,000,000 which "shall bear interest at a rate not in excess of 4 per centum per annum, and shall be fully and unconditionally guaranteed as to interest by the United States, and such guaranty shall be expressed on the face thereof" (48 Stat. 41, 42; 12 U. S. C. 992). The section further provided that in the event the Secretary of the Treasury should pay any interest on such bonds, the amount so paid should become an obligation of the issuing bank to the United States. These provisions of the 1933 Act would have been entirely unnecessary if petitioner were correct in its con-

tention that bonds issued by the joint stock land banks under the original Federal Farm Loan Act were already obligations of the United States.

4. Petitioner relies principally upon that sentence of Section 26 of the Act which provides that "First mortgages executed to Federal land banks, or to joint stock land banks, and farm loan bonds issued under the provisions of this Act, shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation," and contends that "This section making the bonds in question tax exempt instrumentalities of the Government of the United States to be operative at all must be construed to create the governmental obligation contended by the petitioner" (Pet. 5–6).

Petitioner's contention, it is submitted, is clearly without merit for it is well established by the decisions of this Court that "Congress may establish banks for national purposes", that it may, "if it sees fit to do so," exempt securities of such banks from taxation even though the principal business of such banks is "private banking conducted with the usual methods of business."[7]

[7] Joint stock land banks may be described, as Mr. Justice Brandeis stated with reference to national banks and federal reserve banks, as "private corporations in which the Government has an interest." *Emergency Fleet Corp.* v. *Western Union*, 275 U. S. 415, 426.

Smith v. *Kansas City Title Co.*, 255 U. S. 180, 208, 212; *McCulloch* v. *Maryland*, 4 Wheat. 316; *Osborn* v. *Bank of the United States*, 9 Wheat. 738; *Owensboro National Bank* v. *Owensboro*, 173 U. S. 664; *Farmers Bank* v. *Minnesota*, 232 U. S. 516; *Federal Land Bank* v. *Crosland*, 261 U. S. 374; *Federal Land Bank* v. *Bismarck Co.*, 314 U. S. 95.

CONCLUSION

The decision below is plainly correct, and there is no conflict of decisions. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

GEORGE T. WASHINGTON,
Acting Solicitor General.
PEYTON FORD,
Assistant Attorney General.
PAUL A. SWEENEY,
RAY B. HOUSTON,
Attorneys.

MAY 1947.

U. S. GOVERNMENT PRINTING OFFICE: 1947